



ORIGINAL RESEARCH PAPER

Law

RIGHTS OF PERSONS WITH DISABILITIES

KEY WORDS:

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Meaning of Disability:

Disability is an impairment that may be cognitive, development, intellectual, activity, limitations, sensory or some combination of these. It substantially affects personal life activities and may be present from birth or occur during a personal lifetime. Disability is a contested concept, with different meanings of different communities. It may be used to refer to physical or mental attributes that some institutions, particularly medicine, view as needing to be fixed. It may refer to limitations imposed on people by the constraints of an ablest society. People with disabilities have the same health needs as non-disabled people for immunizations, cancer screening etc..

International Human Rights: UN Charter:

The charter of the United Nations of 1945 is the foundational treaty of the United Nations, an intergovernmental organization. Article 55 says that With a view to the creation of conditions of stability and wellbeing which are necessary for the peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people's, the United Nation shall promote:

- a. Higher standard of living, full employment and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems and international cultural and educational cooperation
- c. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Declaration on the Rights of Disabled Persons:

The Declaration of the Rights of Disabled persons was a declaration of the General Assembly of the United Nations made on 9 Dec 1975. It is the 3447th resolution made by the Assembly.

The disabled person shall enjoy all rights contained in this declaration without distinction or discrimination. The disabled persons have inherent rights to respect for their human dignity and irrespective of the origin, nature and seriousness of their handicaps and disabilities, have same Fundamental Rights. Disabled persons have the same civil and political rights as other human beings. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible. Disabled persons have the right to economic and social security, including the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. Disabled persons shall be protected against all exploitation and treatment of a discriminatory, abusive or degrading nature.

Provisions of the Declaration include:

- 1) The definition of "disabled person" as anyone who cannot ensure the necessities of a normal individual and or social life as a result of deficiency in physical or mental capabilities.
- 2) A non-discrimination clause applying the Rights to all

disabled persons regardless of " race , colour, sex, language, religion, political or other opinions , national or social origin , state of wealth, birth " or other situation.

- 3) Anna statement regarding disabled persons right to respect for their human dignity.

The Convention on the Rights of Persons with Disabilities:

The Convention on the Rights of Disabilities is an international human rights treaty of the United Nations intended to protect the Rights and dignity of persons with disabilities. Parties to the convention are required to promote, protect and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law.

In the charter of the United Nations it is proclaimed that the inherent dignity and worth and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Similarly, the United Nations, in the universal declaration of human rights and in the International covenants on Economic, Social and cultural rights. The convention on the Rights of Persons with disabilities deals with matters such as, general principles on the basis of which the rights of the disabled persons are to be promoted and protected, the obligations that have been undertaken by the State parties to adopt measures.

Constitutional Rights of Disabled Persons:

1. Prohibition of Discrimination:

Article 15 is a manifestation of Right to Equality under article 14, as it enshrines a specific dimension of the principles of equality relating to discrimination by state or various grounds. Under article 15 the protection extends only to citizens, unlike article 14 which protects any person. Thus in application article 15 protects from discriminatory state activities but the ambit of article 15 is narrower than that of article¹⁴.

Article 15 of the Indian constitution deals with prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.

It runs as follows:

Article 15(2) says, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disabilities liability restriction or condition with regard to:

- (a) Access to shops, public restaurants, hotels and places of public entertainment; or
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the state funds dedicated to the use of the general public.

Equity In Social, Economic And Cultural Rights:

Article 25 of the CRDP recognizes the right of a person with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, state parties shall ensure an inclusive education system at all levels and lifelong learning. They considered constitution to grant education to children with disabilities if they explicitly

guarantee the right to education, the right to free education, or the right to compulsory education to children with disabilities or prohibit discrimination in education on the basis of disability. Globally only 28% of the countries provide some type of constitutional guarantee of educational rights or the children with disabilities.

3. Right to Work

Article 27 of the CRDP instructs states to recognize the right of persons with disabilities to work, on an equal basis with others; this includes the rights to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

Right to Liberty:

Article 14 of the CRPD instructs state parties to guarantee people with disabilities the right to liberty and security of person. We considered the right to liberty to be guaranteed to persons with disabilities if they were explicitly granted the right to freedom or liberty. Globally, only 9% of the constitution explicitly guarantees the right to liberty to persons with disabilities. However 19% of the constitution specifies that the right to liberty can be denied to persons with the mental health condition.

Right to Freedom of Expression:

In article 21, the CRPD states that to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion include the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communications of their choice.

Rights of Disabled Persons in India:

Persons with disabilities are one of the most neglected sections of our nation. This is due to the sheer indifference of the society which subjects such people to disapproval and antipathy. Such people have several rights under various Indian laws as well as UN conventions that are followed in India. Under section 2(i) of Persons with Disabilities Act, 1995, "disability" includes blindness, low vision, leprosy cured, hearing impairment, loco motor disability, mental retardation and mental illness.

Disability Certificate: It is the most basic document that a disabled person should possess in order to avail certain benefits and concessions. The State Medical Boards established under the State governments can issue a disability certificate to any person with more than 40% disability.

Disability Pension: People who are above 18 years of age, suffering with more than 80% disability and are living below the poverty line are entitled to the disability pension under the Indira Gandhi National Disability Pension Scheme. Various NGOs are dedicated to this because i.e. they help such persons with disabilities to get their disability pension. **Employment:** In government jobs, 3% of the seats are reserved for persons with disabilities.

Income Tax Concession:

Under sections 80DD and 80U of Income Tax Act, 1961, persons with disabilities are also entitled to certain income tax concessions.

Person with Disabilities Act 1995

The Persons with Disabilities Act, 1995 had come into enforcement on Feb 7, 1996. It is a significant step which ensures equal opportunities for the people with disabilities and their full participation in the nation building. The Act provides for both the preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development

and rehabilitation of persons with disability, unemployment allowance for the disabled persons.

Main Provisions of the Act:

- 1) Prevention and Early Detection of Disabilities
- 2) Education
- 3) Employment
- 4) Non discrimination
- 5) Social Security
- 6) Research and manpower development
- 7) Grievance Redress In *Jared Abiding v. Union of India* the supreme Court bearing in mind the discomfort and harassment suffering by a person of loco motor so disability would face while travelling by train particularly too far off places issued directions to the Indian Airlines to grant persons suffering from loco motor so disability to the extent of 80%.

In National Federation of blind v. UPSC

The Supreme Court held that, UPSC may be directed to allow blind persons for appearing the examinations for Indian administrative and allied Services.

In Government of NCT of Delhi v. Bharath Lalmeena

The Delhi High court held that people with disabilities can be appointed as physical education teachers provided they have passed the qualifying examination undergone the requisite training.

Policies in India:

National policy for persons with disabilities, 2006. The Government of India formulated the national Policy for persons with disabilities in Feb 2006 which deals with the physical, educational and economic rehabilitation of persons with disabilities.

The National Policy recognise the Persons with Disabilities are valuable human resources for the country and seeks to create an environment that provides them equal opportunities, protection of their rights and full participation in society. Some of the aspects which the policy focuses on are:

- 1) Prevention of Disabilities
- 2) Rehabilitation Measures
- 3) Women with disabilities
- 4) Children with disabilities

Conclusion

Disability refers to the disadvantage or restrictions of activity caused by the way society is organised which takes little or no account if people who have physical, sensory or mental impairments. Disability is an unfortunate part of human life which can affect not only the natural way of a living but also despair component strength and power. The Government needs to launch more social security schemes for disabled sections and generate more employment opportunities for them. Several schemes and benefits conference on the disabled persons has come up as relief and has successfully served to provide equal opportunities to the disabled section.